***Emergencies Act, Emergency Measures Regulations and Emergency Economic Measures Order* - RCMP Q&As**

Truck Convoy Situation February 2022

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Questions and Answers

What is the purpose of the *Emergencies Act*?

The purpose of the *Emergencies Act* is to authorize the federal government to take special temporary measures to protect the safety of Canadians during a national emergency. In particular, it is used to temporarily fill any gaps in existing federal and provincial/territorial legal authorities to respond to the emergency.

What does a declaration of a public order emergency and enactment of emergency measures under the *Emergencies Act* change?

A declaration of a public order emergency under the *Emergencies Act* permits existing measures to be supplemented with special temporary measures to assist law enforcement in upholding the rule of law and dealing with the emergency situation.

The *Emergencies Act* orders and regulations do not change the nature of police independence or police discretion.

Does the *Canadian Charter of Rights and Freedoms* continue to apply?

Yes. The *Canadian Charter of Rights and Freedoms* (Charter) continues to apply as it did before to protect freedoms including freedom of peaceful assembly and freedom of expression. Measures taken will also be subject to the *Bill of Rights* and have regard to the *International Covenant on Civil and Political Rights*, particularly with respect to fundamental rights that are not to be limited or abridged even in a national emergency.

Emergencies Act

What is a public order emergency?

A public order emergency within the meaning of section 16 of the *Emergencies Act* is an emergency that arises from threats to the security of Canada (as defined in the *Canadian Security Intelligence Service Act*) and that is so serious as to be a national emergency.

For the purposes of the *Emergencies Act*, a national emergency is an urgent and critical situation of a temporary nature that:

1. seriously endangers the lives, health, or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it; or

2. seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada; and
3. cannot be effectively dealt with under any other law of Canada.

When is a protest unlawful?

Protest is not unlawful just because it is loud and people are upset. Nonetheless, the right to protest does not extend to assemblies that are no longer peaceful (e.g. becomes violent or causes a danger to public safety).

Under the EMR a protest becomes an illegal public assembly when it may reasonably be expected to lead to a breach of the peace either by the:

- serious disruption of the movement of persons or goods or the serious interference with trade;
- interference with the function of critical infrastructure; or
- support of the threat or use of acts of serious violence against persons or property.

What orders or regulations have been enacted to implement emergency measures?

There are two sets of measures that have been put in place on a temporary basis: the *Emergency Measures Regulations* (EMR) and the *Emergency Economic Measures Order* (EEMO).

When was there a public order emergency?

The declaration of a public order emergency expires at the end of thirty (30) days, unless ended early or continued in accordance with the *Emergencies Act*. The declaration of a public order emergency was made on February 14, 2022, and was effective on that date. It was revoked by proclamation on **February 23, 2022 at 1600h**.

When were the EMR and EEMO in force?

The EMR and EEMO came into force on **February 15, 2022**. They were in force until the declaration of a public order emergency was revoked by proclamation on **February 23, 2022 at 1600h**.

What happened when the declaration of a public order emergency, EMR, and EEMO were revoked (ended early)?

When the declaration of a public order emergency was revoked, the EMR and EEMO were automatically revoked. All powers granted by the EMR and EEMO disappeared once the declaration, regulations and order were revoked.

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What is the relationship between *Emergencies Act* measures and existing Provincial/Territorial authorities?

The *Emergencies Act* (s. 19(3)) provides that any measures taken by the federal government can not displace the ability of Provinces and Territories to address the crisis. The Act also requires that, to the extent possible, there be concerted action with the Provinces and Territories.

The *Emergencies Act* (s. 20(1)) **does not** grant to the Government of Canada an authority to control or direct any provincial or municipal police force.

What limits, safeguards and accountability mechanisms are built into the *Emergencies Act*?

The measures are temporary and are in place to address a specific emergency.

There are also a number of significant limits, safeguards and accountability mechanisms that are built into the *Emergencies Act*. These include:

- requirement for consultations with the provinces and territories prior to making a declaration (s. 25);
- requirement to recall Parliament within seven (7) days of a declaration to confirm or revoke a declaration (s. 58);
- tabling the order and regulations, with Parliament having the power to amend or revoke any order or regulation (s. 61); -
- review of the exercise of powers and performance of duties by a parliamentary committee(s. 62); and
- an inquiry must be held within sixty (60) days, and report of the inquiry must be laid in each House of Parliament within three hundred sixty (360) days, in each case after the declaration was revoked (s. 63).

Enforcement of Emergency Measures Regulations (EMR)

What are the prohibitions under the new EMR?

The EMR create five prohibitions:

1. participating in a public assembly that may reasonably be expected to lead to a breach of the peace by disruption of movement of persons or goods, serious

interference with trade or the functioning of critical infrastructure, or supporting threats of violence or acts of violence against persons or property;

2. causing a minor to participate in such an assembly;
3. entering Canada with the intent to participate in or facilitate such an assembly (applies only to foreign nationals who are not exempted);
4. travelling to or within such an assembly or a place where an assembly is reasonably expected to take place; and
5. directly or indirectly using, collecting, providing, making available, or inviting a person to provide property to or for the purpose of benefiting persons participating in or facilitating such an assembly.

Can the EMR be used to force tow truck companies or individuals to provide services?

Yes. The EMR require individuals and companies to provide, on request of the Minister of Public Safety and Emergency Preparedness (Minister), Commissioner of the RCMP (Commissioner), or person acting on their behalf, the essential goods and services requested for the removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade.

Are towing companies compensated when they are required to render essential goods or services under the EMR?

Yes. Canada is required to provide reasonable compensation at local market rates for the essential goods or services rendered (ss. 9(1)).

The EMR designate certain places as protected. What does that mean?

The EMR provide that certain named places are "designated as protected and may be secured".

The EMR provide the authority to secure certain designated protected places (e.g., critical infrastructure such as airports, utilities, border crossings, and government buildings) (s. 6).

When can the Minister designate new protected places?

The Minister can designate new protected places any time while the EMR are in force. No protected places were designated under s. 6(f) while the EMR were in force.

Does a place need to be designated as protected before enforcement action be taken?

No, the enforcement tools of the EMR are applicable to unlawful assemblies.

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If an unlawful assembly is taking place anywhere, even if it is not a place listed in section 6 (critical infrastructure; Parliament Hill and the parliamentary precinct; official residences; municipal, provincial, territorial and federal government buildings and defence buildings; war monuments and memorials) or specifically designated, police have the authority to enforce the prohibitions in section 2.

The purpose of the designation of certain places as protected under the EMR is to allow preventive or protective measures to be taken to secure them (e.g. controlling entry into the area, diverting traffic, and other measures to secure the area according to operational requirements and discretion), regardless of whether an unlawful assembly is already taking place.

Who can enforce the EMR?

The EMR are enforceable by the police of jurisdiction, including municipal and provincial police services and the RCMP, both in its capacity as Canada's federal police force and where the RCMP is the police of jurisdiction.

In addition to police officers, police constables and constables, the EMR definition includes only those peace officers who are employed for the preservation and maintenance of the public peace. Therefore, not all peace officers under the *Criminal Code* or provincial statutes can enforce the EMR.

Whether a peace officer will be a peace officer for the purposes of enforcing the EMR must be made on an individual basis considering the authority, responsibilities and duties in their enabling legislation or appointment.

What enforcement measures/consequences are at the disposal of peace officers under the EMR?

The EMR include enforcement measures that may be used by peace officers, including the RCMP. Contraventions of the EMR or of a lawful order by a peace officer made under them may be prosecuted as a summary conviction (fine up to $500 or imprisonment up to 6 months or both) or indictable offence (fine up to $5000 or upon to 5 years imprisonment or both).

Can an investigation continue and the prosecution and conviction take place for offences under the EMR after it is no longer in effect?

Yes. As long as the offence occurred while the measures were in force, charges may be laid and investigations and prosecutions can continue after the EMR were revoked, subject to police discretion and to prosecution decisions as to whether there is a reasonable prospect of conviction and whether it is in the public interest to proceed.

What happens to property seized under the EMR if they are revoked?

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If property seized under the EMR is required as evidence in an investigation or for a prosecution, it may be retained by police in accordance with the usual *Criminal Code* provisions. Property seized but not required as evidence may be returned. The normal provisions of the *Criminal Code* regarding the return of such property apply.

Who would prosecute offences under the EMR – Provincial Crown or the Public Prosecution Service of Canada (PPSC)?

PPSC has the authority to prosecute offences pursuant to the EMR. This authority is concurrent with the provincial Attorney General's authority. PPSC would usually have the lead in prosecuting national security matters and in this case has confirmed it will lead on the *Emergencies Act* offences.

Any challenges to the authority of PPSC will be for PPSC to address, not police.

Is ticketing an option under the EMR?

No. For the offences under the EMR, there is no ticketing option. The normal provisions of the *Criminal Code* regarding arrest (e.g., ss. 494, 495) and bringing of charges apply.

When enforcing provincial or municipal offences, the ticketing regimes for those offences are available as usual.

Who can make a request to a towing company to render essential goods and services (section 7)?

The Minister, Commissioner, or a person acting on their behalf is authorized to request essential goods and/or services for removal, towing and storage of vehicles, equipment, etc. that are part of a blockade. The language is not restrictive; so the Minister or Commissioner may assign the authority to those outside the federal government.

As of February 17, 2022, the Commissioner has authorized all Commanding Officers, Deputy Commissioners, Criminal Operations (CROPs) officers, and RCMP members designated by them to act on her behalf under section 7 of the EMR.

The Commissioner has also authorized the OPP Commissioner and any OPP police officer he designates to requisition essential goods and services under section 7 of the EMR.

Can a Province/Territory/Police Force ask the Minister, the Commissioner or a person acting on their behalf to direct a towing company to render essential goods and services? If so, what is the procedure for doing so?

Nothing in the EMR provides for a provincial/territorial/police request to the Minister or Commissioner for assistance, but nothing precludes it. The overarching EMR objective

is to remove the blockades wherever they are. Given the silence of the EMR, there is no fixed procedure for such requests and informal or administrative processes can be worked out as needed. The EMR is clear, however, that the ultimate request to the third-party service provider must come from the Minister or Commissioner or a person acting on their behalf.

Are towing companies compensated when they are required to render essential goods or services under the EMR?

Yes. Canada is required to provide reasonable compensation at local market rates for the essential goods or services rendered (ss. 9(1)).

Is compensation available for loss, injury or damages as a result of action taken under the EMR?

Yes. The *Emergencies Act* (Part V) and EMR (ss. 9(2)) provide an alternative mechanism to apply for compensation for anyone who suffers loss, injury or damage (i.e., instead of filing a claim in Court). Specific details about how the mechanism works would be provided by regulations under the *Emergencies Act* that have not been enacted yet.

Emergency Economic Measures Order (EEMO)

What is the purpose of the EEMO?

The EEMO is an order made under the *Emergencies Act* that deals specifically with finance and banking measures to limit the funding of the activities contributing to the public order emergency.

What does the EEMO require from banks and other financial service providers?

The EEMO requires all entities such as banks, credit unions, trust and loan companies, cryptocurrency exchanges and anyone providing financial services to take immediate steps to temporarily restrict access to funds to (or for the benefit of) those involved in the blockades.

It requires banks and other financial services providers to cease to provide services to (or for the benefit of) any person or entity involved in the blockades, not to facilitate any transaction relating to funds or virtual currency, and not offer any financial service and providing any funding, including virtual currencies, to anyone involved in the blockades.

It also requires banks and other financial services providers (e.g. credit unions including les caisses populaires, insurance companies, securities dealers) to continually monitor whether they are in possession or control of property (e.g. a bank account) that is

owned by an individual or entity that is involved in the blockades. If the institution does have property, such as a bank account, that belongs to someone involved in the blockades, they will have to freeze the account ("cease dealing" with the property).

The regulation also captures crowdfunding (and related payment service providers) associated with the blockades. It extends anti-money laundering and anti-terrorist financing requirements to crowdfunding platforms and the payment service providers. Specifically, the regulation will ensure that these entities register with FINTRAC and report any suspicious and large value transactions to FINTRAC.

What enforcement measures/consequences do the EEMO contain?

The EEMO does not contain any enforcement provisions.

What type of information sharing does the EEMO permit?

The EEMO requires banks and other listed financial service providers to disclose certain information to the Commissioner of the RCMP or the Director of CSIS. In particular, they must disclose the existence of any property in their possession or control that belongs to a person/entity who is involved in the blockades and any transactions, including proposed transactions, relating to such property.

The obligation to disclose is limited in terms of what entities it applies to and is only triggered where there is reason to believe property belongs to people who are engaged in the illegal activities set out in the EMR.

The EEMO also authorizes the disclosure of information by a government (federal, provincial or territorial) institution to entities that are subject to the obligation to freeze accounts (cease dealings). The disclosing institution must be satisfied that the disclosure will contribute to the application of the EEMO. It is understood that the government institutions will comply with the *Charter*, applicable privacy legislation and other legal requirements when determining whether or not to disclose information.

Is a government (federal, provincial or territorial) institution required to share information with banks and other listed financial service providers in the EEMO?

No, the government (federal, provincial or territorial) institution retains its discretion with respect to whether it wishes to share information.

Do I still have to comply with the relevant privacy legislation when disclosing personal information to financial EEMO entities?

Yes. The relevant privacy legislation continues to apply to the disclosure of personal information under the EEMO.

Can government institutions disclose information under the EEMO (s. 6) after the EEMO is no longer in effect?

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No. Information disclosures by government institutions under the EEMO are no longer authorized after the EEMO is revoked. Information that had been received by a financial service provider under the EEMO while it was in effect could not be used for other purposes and would have to be treated in accordance with applicable privacy and other laws.

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